

**REMARKS**

Entry of the foregoing and reconsideration of the application identified in caption, as amended, pursuant to and consistent with 37 C.F.R. §1.111 and in light of the remarks which follow, are respectfully requested.

At the outset, it is respectfully noted that claims 1-23 and 30 were previously canceled in the Request for Filing Divisional Application Under 37 C.F.R. §1.53(b) filed on March 3, 2004, at page 2, item 9 thereof. The Examiner is respectfully requested to acknowledge the cancellation of claims 1-23 and 30. In light of such claim cancellations, claims 24-29 are currently pending in the present application.

Applicant notes with appreciation the indication that claims 25 and 27 would be allowable if rewritten in independent form including all of the features of the base claim and any intervening claims (Official Action at page 4).

By the above amendments, the specification at pages 15 and 19 has been amended to correct typographical errors therein consistent with amendments made in parent Application No. 09/871,724, now U.S. Patent No. 6,727,037. Claim 24 has been amended for readability purposes by replacing the word "have" with "has". Claim 25 has been amended to correct a typographical error by replacing "thiobartituristic" with "thiobarbituric". Claim 27 has been amended for readability purposes by replacing the word "possibly" with "optionally". Claim 29 has been amended for readability purposes by replacing the capitalized word "Each" with "each". Each of claims 26 and 29 has been amended for clarification purposes to recite the definition of  $Z^2$ . Support for such amendments can be found in the instant specification at least at page 7, lines 14 and 15.

In the Official Action, claims 26 and 29 stand rejected under 35 U.S.C. §112, second paragraph, for the reasons discussed at page 2 of the Official Action. In this regard, as

discussed above, each of claims 26 and 29 has been amended for clarification purposes to recite that  $Z^2$  represents a polymethine chain of at least 5 carbon atoms. Accordingly, withdrawal of the above §112 rejection is respectfully requested.

Claims 1-24 and 30 have been rejected under the judicially created doctrine of obviousness-type double patenting as being obvious over claims 1-23 of U.S. Patent No. 6,727,037 (hereinafter the '037 patent). This rejection is moot with respect to claims 1-23 and 30, which were previously canceled as explained above. Withdrawal of this rejection as it has been applied to claim 24 is respectfully requested for at least the following reasons.

The present application is a divisional application based on Application No. 09/871,724, now the '037 patent, which has been relied on by the Patent Office in the present obviousness-type double patenting rejection. During prosecution of the '724 application, subject matter corresponding to claim 24 of the present application was subjected to a restriction requirement. As a result of the restriction requirement, such subject matter was withdrawn from further consideration in the '724 application. Thus, under the provisions of 35 U.S.C. §121, it is apparent that the above obviousness-type double patenting rejection is improper and should be withdrawn, and such action is respectfully requested. See M.P.E.P. §804.01.

Claims 1-24, 26 and 28-30 stand rejected under 35 U.S.C. §102(b) as being anticipated by European Patent Document No. 1 093 934 (*EP '934*). This rejection is moot with respect to claims 1-23 and 30 in light of the previous cancellation of such claims as discussed above. Withdrawal of this rejection as it has been applied to claims 24, 26, 28 and 29 is respectfully requested for at least the following reasons.

Contrary to the Patent Office's reliance on *EP '934* under 35 U.S.C. §102(b), Applicant submits that *EP '934* does not qualify as §102(b) prior art against the present

application. As discussed above, the present application is a divisional of Application No. 09/871,724, filed June 4, 2001. Since the April 25, 2001 publication date of *EP '934* is not more than one year prior to the filing date of the '724 application, it is apparent that *EP '934* does not qualify as §102(b) prior art.

Furthermore, it is noted that the present application claims the benefit of foreign priority of Japanese Patent Application No. 2000-169180 (JP '180), filed June 6, 2000. The foreign priority claim to JP '180 has been perfected in light of the submission of the attached verified English translation of JP '180. In addition, the June 6, 2000 filing date of JP '180 predates the April 25, 2001 publication date of *EP '934*. As such, in light of the perfected foreign priority claim, it is apparent that *EP '934* does not qualify as §102(a) prior art against the present application. Accordingly, for at least the reasons discussed above, withdrawal of the above rejection based on *EP '934* is respectfully requested.

With respect to the Examiner-initialed form PTO-1449 mailed with the Official Action dated August 23, 2004, it is noted that the Examiner's initials have not been provided for the European Search Report cited in the form PTO-1449. Applicant respectfully requests issuance of a supplemental Examiner-initialed form PTO-1449 bearing the Examiner's initials for the European Search Report cited therein.

From the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order, and such action is earnestly solicited.

If there are any questions concerning this paper or the application in general, the Examiner is invited to telephone the undersigned.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

Date: November 23, 2004

By: 

Roger H. Lee

Registration No. 46,317

P.O. Box 1404  
Alexandria, Virginia 22313-1404  
(703) 836-6620